



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201041043

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 21 2010

Uniform Issue List: 408.03-00

SET:EP:RA:TY

Legend:

Taxpayer A	=
IRA X	=
Financial Advisor C	=
Individual D	=
Financial Institution M	=
Account L	=
Amount B	=
Date 1	=
Date 2	=
Date 3	=

Dear

This is in response to a letter dated _____ submitted on your behalf by your authorized representative, as supplemented by correspondence dated _____ in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 63, represents that his failure to accomplish a rollover of mutual funds in IRA X, valued at Amount B, to an IRA at Financial Institution M within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Financial Advisor C (an employee of Financial Institution M), in addition to Taxpayer A's medical condition during the 60-day rollover period. Taxpayer also represents that Amount B has not been used for any other purpose.

On Date 1, Taxpayer A, concerned over his recent discovery that he suffered from a serious medical condition and responding to the urging of Financial Advisor C, who whom he had consulted for more than five years, authorized Financial Advisor C to consolidate all of his investment accounts at Financial Institution M. As part of that effort, Taxpayer A verbally authorized Financial Advisor C to transfer all of the funds in IRA X (Amount B) to an IRA at Financial Institution M. Financial Advisor C required no written authorization from Taxpayer A to transfer the funds. On Date 2, Financial Advisor C transferred the IRA X funds to Financial Institution M. Because Taxpayer A did not have an IRA account at Financial Institution M at the time of the transfer, the funds were deposited into Account L, a non-IRA, individual brokerage account. Following the transfer, Financial Advisor C never notified Taxpayer A that the funds were no longer held in an IRA. Taxpayer A, distracted by his recently diagnosed medical condition, as well as his hospitalization and surgery on Date 3 (which occurred during the 60-day rollover period) to treat that medical condition, did not become aware of Financial Advisor C's error until he sought to transfer his IRA funds to another financial institution several months after the 60-day rollover period had expired. Financial Institution M has provided a letter in which Financial Advisor C and his assistant, Individual D, both acknowledge that Taxpayer A had verbally requested them to transfer the IRA X funds into an IRA at Financial Institution M.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement with respect to the distributions totaling Amount B contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by a mistake made by Financial Advisor C (an employee of Financial Institution M), in addition to his medical condition during the 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions totaling Amount B from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount B will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact
(ID #) at () . Please address all correspondence to

Sincerely yours;



, Manager,
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: